

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:DAL:2OKL:TL-N-6416-00
CGMcLoughlin

date: APR 2 2001

to: Manager, Technical Support Section - Area 10, Group 6
Attn: Leola Casey

from: Associate Area Counsel (LMSB:DAL:2), Oklahoma City P.O.D. 2000-OKC

subject: Request for Advisory Opinion

Taxpayer:
EIN:

[REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the I.R.S. recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to I.R.S. personnel or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on the I.R.S. and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

Although we informally coordinated this matter with the National Office, the advisory is subject to the review procedures of CCDM (35)3(19)4(4). The CCDM procedures require us to transmit a copy of the memorandum to the National Office. The National Office has ten days from receipt of our memorandum to respond. The National Office may extend the review period if necessary. We will keep you informed of any delays.

DISCUSSION

We are responding to your November 15, 2000, memorandum requesting our advice concerning interest netting under I.R.C. § 6621(d). You specifically desire our views on: (a) whether a special statute of limitations, such as I.R.C. § 6230(d) or I.R.C. § 1314(b), may be taken into account in determining the availability of an underpayment interest period under Rev. Proc. 99-43, 1999-2 C.B. 579; and (b) whether the existence of outstanding unprocessed TEFRA adjustments preclude the government from processing interest netting claims covering the same periods. We have addressed each issue below.

Facts

██████████ is the common parent for a group of corporations filing a consolidated return. On ██████████, ██████████ filed a claim for interest netting under Rev. Proc. 99-43, 1999-2 C.B. 579. The claim requested a delay in processing until interest from audit adjustments to the ██████████ and ██████████ taxable years could be included in the interest netting calculations. On ██████████, ██████████ supplemented its interest netting claim and included information on the ██████████ and ██████████ taxable years.

The claim, as supplemented, covers deficiency interest paid with respect to the taxable years ██████████ through ██████████ and overpayment interest with respect to the taxable years ██████████ through ██████████. A chart outlining the claimed interest netting periods is attached. As can be seen, most of the underpayment interest periods set forth in the claim do not satisfy the 3-year or 2-year statute of limitations under I.R.C. § 6511 set forth in Rev. Proc. 99-43, 1999-2 C.B. 579.

The underpayments were generally assessed within the period set forth in I.R.C. § 6501(c)(4), since statute extensions are typically obtained from this CEP taxpayer. However, in one instance, a ██████████ deficiency of \$██████████, the government assessed a deficiency several years after I.R.C. § 6501(c)(4) expired. The government was able to assess this deficiency using the special mitigation statute of limitation under I.R.C. § 1314(b).

██████████ also has other potential underpayment periods available. ██████████ has a minor interest in the ██████████ ("██████████"). ██████████ operates an oil and gas exploration and production business on the ██████████. ██████████'s partners include several ██████████ oil companies, such as ██████████ and ██████████. Beginning with the ██████████ taxable year, the ██████████

██████ statutes of limitations for assessment under I.R.C. § 6229 still remains open. Consequently, deficiencies attributable to ██████████ partnership items could have been assessed on ██████████, with respect to the open years. ██████████ would also have been able, under I.R.C. §§ 6227(b), 6230(d), to assert claims attributable to ██████████ partnership items on ██████████, for such years.

Analysis

Congress enacted I.R.C. § 6621(d) in 1998 to abolish the interest rate differential between underpayments and overpayments. I.R.C. § 6621(d) provides for a net interest rate of zero to the extent of overlapping tax underpayments and tax overpayments. The provision generally applies to interest for periods beginning after July 22, 1998 (interest accruing on or after October 1, 1998).

However, the net interest rate of zero also applies to interest for periods beginning before July 22, 1998, (interest accruing prior to October 1, 1998) if certain conditions are met. Firstly, both periods of limitations applicable to the tax underpayment and to the tax overpayment must have been open on July 22, 1998. Secondly, the taxpayer must, on or before December 31, 1999, reasonably identify and establish the periods of tax underpayments and overpayments to which I.R.C. § 6621(d) will apply. Section 3301(c)(2), Restructuring and Reform Act of 1998 ("RRA"), 1998-3 C.B. 145, 201.¹

In implementing these provisions, Sec. 4.02(1), Rev. Proc. 99-43, 1999-2 C.B. 579, 580, defines the applicable limitations period for underpayment interest as the 3-year or 2-year period for filing a claim under I.R.C. § 6511. Sec. 4.02(2), Rev. Proc. 99-43, 1999-2 C.B. 579, 580, defines the applicable limitations period for overpayment interest as the 6-year period in which a suit must be brought under 28 U.S.C. §§ 2401, 2501.

Although Rev. Proc. 99-43 refers only to the claim statute under I.R.C. § 6511, the revenue procedure did not intend to limit interest netting to underpayment interest covered by I.R.C. § 6511. The statutory language for the effective date of I.R.C. § 6621(d) is, in fact, broader. Sec. 4002(d), Tax and Trade Relief Extension Act of 1998, P.L. 105-277, 112 Stat. 2681 (1998), clarified that the availability of interest netting for

¹ Rev. Proc. 99-43 modified these claim filing requirements where at least one of the applicable statute of limitations expires after December 31, 1999.

periods beginning prior to July 22, 1998, is "subject to any applicable statute of limitations not having expired with regard to either a tax underpayment or a tax overpayment." The statutory language is expansive enough to include other special statutes of limitations which represent the functional equivalent of I.R.C. § 6511.

For TEFRA partnership adjustment claims, I.R.C. §§ 6230(d) and 6227 provide the same function as I.R.C. § 6511 does for normal tax claims. I.R.C. § 6230(d)(1) and (2) and I.R.C. § 6227(a) and (b) set forth the period for asserting refund claims for TEFRA partnership adjustments. Those provisions link the timeliness of a refund claim to the statute of limitations for making TEFRA partnership item assessments. Where the I.R.C. § 6229 TEFRA assessment statute is extended, I.R.C. §§ 6227(b) and 6230(d)(2) allow a refund claim to be asserted within 6 months after the TEFRA assessment statute expires. As the functional equivalent of I.R.C. § 6511, it is appropriate to use I.R.C. §§ 6230(d) and 6227, rather than I.R.C. § 6511, to determine the availability of interest netting for a TEFRA underpayment claim. Thus, with respect to a TEFRA underpayment, interest netting would be available where the statute of limitations for asserting a claim was open on July 22, 1998. Here, the applicable [REDACTED] TEFRA statutes remain open even today. Any underpayments stemming from [REDACTED] adjustments would be available for interest netting.

Similarly, [REDACTED] should be able to claim interest netting for the \$ [REDACTED] payment made in [REDACTED] with respect to an I.R.C. § 1311 mitigation adjustment. In the case of mitigation adjustments, I.R.C. § 1314(b) provides a limited exception to the normal assessment and claim statutes. Where I.R.C. § 1311 permits the correction of an error, I.R.C. § 1314(b) allows the adjustment, whether an assessment or a refund claim, to be accomplished within one year after the mitigation determination occurs. The taxpayer may bring a refund suit challenging the mitigation adjustment assessment thereafter. However, the grounds for seeking the refund in the action are limited to the subject of the mitigation adjustment. I.R.C. § 1314(b); Treas. Reg. § 1.1314(c)-1(d). No unrelated issues may be raised in the refund action.

Here, I.R.C. § 1314(b) would not preclude [REDACTED] from challenging the deficiency interest computation in a refund action. The correct amount of interest due on the mitigation assessment is directly related to the mitigation adjustment. If the government incorrectly computed the interest, [REDACTED] would have been able to challenge the computation, as well as the underlying mitigation adjustment, in a refund claim filed within

two years of the payment. Since the \$ [REDACTED] payment occurred on [REDACTED], [REDACTED] had until [REDACTED], to submit a refund claim. For that reason, the \$ [REDACTED] payment will qualify for interest netting.

Finally, the government may process [REDACTED] current interest netting claim even though potential [REDACTED] TEFRA adjustments are still pending. The potential [REDACTED] TEFRA adjustments do cover significant periods of time which overlap with periods set forth in [REDACTED] claim. However, each overpayment and underpayment may only be considered once when calculating interest netting. Sec. 2.03(2), Rev. Proc. 99-43, 1999-2 C.B. 579, 580. If an overpayment or underpayment is used here, it will not be available to later credit against a [REDACTED] Bay TEFRA adjustment. This may cause the government some practical difficulties and require us to maintain records of our interest netting refund claim processing for many years. Nonetheless, these practical difficulties do not prevent us from processing [REDACTED] current claim.

Please contact Glenn McLoughlin at (405) 297-4803 if you have any questions.

MARK E. O'LEARY
Associate Area Counsel

By: 

C. GLENN McLOUGHLIN
Senior Attorney

cc: AAC (LMSB:DAL:2)